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# Shipments to Iran: The Legal Issues

J By JEFF GERTH

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WASHINGTON, Nov. 11 — The White House counsel was never consulted as the National Security Council, operating with the approval of President Reagan, supervised shipments of military matériel to Iran over the last 18 months, according to past and present White House officials.

But in the last few days the counsel, Peter J. Wallison, has begun an examination of the legal issues surrounding the affair, those officials said.

With critics in Congress and elsewhere casting doubt on the legality of the Iran operation, the White House insisted Monday that "no U.S. law has been or will be violated."

But today, a White House official said that although there was a presumption that the Iran dealings were legal, Mr. Wallison's office had not yet reached any conclusions.

The White House official said Attorney General Edwin Meese 3d had given a legal opinion supporting the Iranian operation. The Attorney General is not a member of the N.S.C. and does not customarily give legal advice about its activities, according to the official and other Administration aides.

## 'Questions Now Being Looked At'

Mr. Meese's adviser on national security affairs, Deputy Assistant Attorney General Allan Gerson, declined to talk about the matter today except to say that "all of these questions are now being looked at" by the Justice Department "in conjunction with the White House, toward a uniform position at the White House."

The legal issues in the secret dealings between Iran and the United States are complex, according to Administration and Congressional officials as well as legal experts.

The questions include whether the shipments to Iran violate provisions of

the Arms Export Control Act or an executive order issued in 1979 by President Carter and renewed by President Reagan banning arms shipments to Iran, and whether dealings between Iran and the United States should have been reported to Congress under amendments to the National Security Act or Foreign Assistance Act.

Some legal experts and officials cited an 1868 law that gives the President wide latitude in winning the release of hostages, though no official said the law was used as a justification for the Iran contacts. The 118-year-old law, dealing with protection of American citizens abroad, requires the President to report his efforts to Congress "as soon as practicable."

## Many Missing Details

Many outside experts as well as some Administration officials said a full determination of the legal issues was not possible until much more is disclosed about the affair, including how it was financed, who participated, what was sent to the Iranians and what the Administration hoped to gain by the operation.

Intelligence and Congressional experts said that the financing of covert activities is often difficult to trace because they can be funded in a variety of ways, often using hidden accounts.

The N.S.C. has a budget of its own; it requested more than \$4 million this year. Moreover, the President has his own fund for special projects. Lloyd Cutler, White House counsel under President Carter, said that during his tenure the special fund was some \$20 million.

More fundamentally, the Iranian dealings touch on a longstanding dispute on the role of Congress in sensitive diplomatic issues. That dispute is likely to be fueled by the current controversy in light of suggestions by Administration officials that they will invoke executive privilege when Congress begins its inquiries into the matter.

Administration officials today tried to portray the secret Iranian dealings as part of a larger foreign policy initiative to improve relations with Iran, rather than a narrow covert action designed to win the release of American hostages in Lebanon. This portrayal could provide an argument for not reporting the Iranian contacts to Congress.

Under amendments to the National Security Act commonly known as the Boland amendments, covert actions are to be reported to Congress. But the amendments also recognize the broad Constitutional duties of the executive branch, which Administration officials argue include the conduct of foreign policy, such as improving relations with Iran.

According to legal experts within the Administration and outside, a determination of the legality of the transfer, directly or indirectly, of arms or equipment to Iran depends on details of the transaction that have not yet been made public.

In 1979, President Carter directed that all arms exports to Iran be banned, under the authority of the Arms Export Control Act. He also issued an executive order freezing Iranian assets in the United States, an order which President Reagan has continued to enforce.

Under the arms export act, Congress must be notified of all sales or transfers of major items of defense equipment — tanks or planes, for example — with a total value of over \$14 million, and of all defense articles if the value exceeds \$50 million. This reporting requirement also covers resales and transfers: Any direct recipient of American-made matériel must obtain United States approval to resell or give it to a third party.

American and Israeli officials have said that Israel served as a conduit for the shipment of arms and spare parts to Iran, but no details have been disclosed about the equipment or its value. The Israelis would have needed approval from the United States to pass the shipments along to Iran; President Reagan's approval would have been sufficient if the value of the shipments did not exceed the threshold, but if the dollar standard were met, Congress would have had to be consulted.

Congressional officials have said they were not told of the Iran operation before they were revealed in Middle Eastern newspapers earlier this month.

Other laws, however, could be interpreted as requiring Mr. Reagan to inform Congress of the Iran operation regardless of the value of the shipments.

## Loopholes Opened and Closed

Under the Boland amendments to the National Security Act of 1947, passed in 1982, as well as a 1981 executive order by President Reagan on intelligence activities, covert activities — any secret intelligence activity beyond normal intelligence gathering — must be reported to Congress by the Director of Central Intelligence.

Under amendments to the Foreign Assistance Act of 1961, monies appropriated to the C.I.A. that are used for covert activities must be specifically approved by the President.

A loophole seems to appear in the fact that it was the N.S.C., not the C.I.A., that is reported to have executed the Iran operation. But a covert operation must be reported to Congress, even if the C.I.A. is not involved, since the Boland amendments refer to "any department, agency or entity of the United States."

However, the 1982 amendments also note that such reporting must be "consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches of the Government." Administration officials interpret this clause as not requiring the reporting of certain foreign policy activities.